

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE**

UNITED STATES OF AMERICA,

v.

DAVID C. KERNELL

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**No. 3:08-CR-142
JUDGES PHILLIPS/SHIRLEY**

MOTION TO FILE FORENSIC REPORTS UNDER SEAL

Comes the defendant, David C. Kernell, pursuant to revised Local Rule 26.2(b), and hereby respectfully moves the Court for an order allowing the five forensic reports produced by the government to be placed in the record under seal during pre-trial proceedings. The basis of this motion is that the reports contain personal information and identifiers that would otherwise require extensive redaction pursuant to Fed. R. Crim. P. 49.1. Further, the reports state that they contain confidential reverse engineering analysis and information about a sophisticated program that had been installed without consent on the computer seized from Mr. Kernell's apartment. The program, which was installed by an unknown method before the computer ever came into Mr. Kernell's possession, uses sophisticated technology to record and report personal information without the user's knowledge, and it would appear to be unnecessary to release the details of the program publically at this time. Finally, the reports relate in detail the government's factual position, and their publication could prejudice Mr. Kernell's right to a fair trial. Accordingly, Mr. Kernell respectfully submits that he has shown good cause pursuant to Local Rule 26.2.

Pursuant to Local Rule 26.2(b) an electronic copy on disc of the reports and attachments will be proffered under seal pending a ruling on the motion. Because of the number of files, counsel is submitting them on disc rather than filing them as sealed documents on ECF.

The reports were referenced during previous arguments but have not been placed before the Court for review. Mr. Kernell makes this motion in order to put these reports into the record in anticipation of the hearing on December 3, 2009, so that the Court may review the reports, which shed light on the extent of the examination of the computer and the manner in which the warrants were executed.

Respectfully submitted this 30th day of November, 2009.

RITCHIE, DILLARD & DAVIES, P.C.

/s/ Wade V. Davies

WADE V. DAVIES [BPR #016052]
ANNE E. PASSINO [BPR #027456]
606 W. Main Street, Suite 300
P. O. Box 1126
Knoxville, TN 37901-1126
(865) 637-0661
wdavies@rddlwf.com
apassino@rddlwf.com

Counsel for David C. Kernell

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing has been filed electronically this 30th day of November, 2009. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

/s/ Wade V. Davies

WADE V. DAVIES